Gazette Extraordinary No. 90 dated 14th July 1958.

ACT 31 OF 1958

THE KERALA AGRICULTURISTS DEBT RELIEF ACT, 1958

An

ACT

to give relief to indebted agriculturists in the State of Kerala.

Preamble.—WHEREAS it is considered necessary to provide for the relief of indebted agriculturists in the State of Kerala;

BE it enacted in the Ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Agriculturists Debt Relief Act, 1958.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "agriculturist" means a person who has an interest, other than as a simple mortgagee, in any agricultural or horticultural land, and shall include a *varamdar, kudikidappukaran, coolypattamdar, sambalapattamdar, sambalachittudar,* licensee, and *tharikuthukaran,* but shall not include—

(i) any person assessed to sales-tax on a turnover which in the aggregate is not less than thirty thousand rupees in any two years within the three years immediately preceding the commencement of this Act, under the Madras General Sales-tax Act, 1939 or the General Sales-tax Act, 1125 or the Central Sales-tax Act, 1956 or the law of any other State relating to sales-tax;

(ii) any person assessed to income-tax under the Indian Income-tax Act, 1922, in any two years within the three years immediately preceding the commencement of this Act;

(iii) any person assessed to agricultural income-tax in any two years within the three years immediately preceding the commencement of this Act, under the Agricultural Income-tax Act, 1950, or under any other law relating to agricultural income-tax on an income exceeding five thousand rupees per annum; or

any person liable to pay basic tax exceeding one hundred and fifty rupees per annum in any three years after 1950-51 and before the commencement of this Act.

Explanation.—For the purpose of this sub-clause, a person shall be deemed to be liable to pay basic tax exceeding one hundred and fifty rupees per annum, if he would have been so liable had the Land Tax Act, 1955, been in force throughout the State of Kerala during the said period;

(iv) a firm registered under the Indian Partnership Act, 1932, or a company as defined in the Companies Act, 1956,

or a corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian Law.

Explanation I.—For the purpose of this clause, the expression "person" shall include a family, provided that sub-clauses (i) and (iii) of this clause in their application to a family consisting of not less than five members, shall be read as if for the turnover or income, specified therein, twice such turnover or income, as the case may be, were substituted.

Explanation II.—Where a family is an agriculturist, every coparcener or member of the family shall be deemed to be an agriculturist, provided that he does not fall under any of the categories specified in sub-clauses (i) to (iii);

(b) "Court" means any civil court having jurisdiction to entertain a suit for the recovery or discharge of a debt;

(c) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract or under a decree or order of any Court, or otherwise, and includes any debt or balance of debt due at the commencement of this Act under the Madras Indebted Agriculturists (Re-payment of Debts) Act, 1955, or the Travancore-Cochin Indebted Agriculturists Relief Act, 1956, but does not include—

(i) any sum payable to the State or the Central Government or to any local authority;

(ii) any sum payable to the State Bank of India or the Reserve Bank of India or to any co-operative society including a land mortgage bank, registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932, provided that the right of the bank or the society to recover the sum did not arise by reason of an assignment made subsequent to the 1st day of July, 1957;

(iii) any liability arising out of a breach of trust;

(iv) any liability in respect of maintenance;

(v) any liability in respect of wages or remuneration due as salary or otherwise for services rendered;

(vi) any debt which represents the price of goods purchased for purpose of trade;

(vii) any liability for which a charge is provided under sub-clause (b) of clause (4) of section 55 of the Transfer of Property Act, 1882;

(viii) any debt or debts due to a widow at the commencement of this Act, provided that the value of the property owned by her at the commencement of this Act including the principal amount of debt or debts so due does not exceed six thousand rupees.

Explanation.—For the purpose of this sub-clause, the house in which the widow lives, her wearing apparel or such like personal belongings shall not be regarded as property;

(ix) any rent payable in respect of any land or building;

(x) any liability incurred or arising under a chitty or kuri which is registered or licensed under the Travancore Chitties Act, 1120, or the Cochin Kuries Act, 1107, or conducted under any chit fund scheme, and which had not terminated one year before the commencement of this Act.

Explanation.—For the purpose of this sub-clause, a chitty or kuri shall be deemed to have terminated—

(a) when the period fixed in the variola or vaimbu or kurippattika, or the period as altered by a subsequent special resolution for the duration of the chitty or kuri, has expired; or

(b) when the legal representative of a deceased foreman or the guardian of a foreman of unsound mind or the subscriber or the subscribers selected therefor fail to conduct the chitty or kuri or to make suitable arrangements for the further conduct of the chitty or kuri; or

(c) on the failure of the foreman to pay the prize amount to the subscriber within one month from the due date thereof; or

(d) on the failure of the foreman to conduct the chitty or kuri at any instalment or on any other date before the next instalment as may be agreed upon in writing by a majority of the non-prized subscribers:

Provided that if there are more foremen than one and one or more such foremen are living and are not disqualified to conduct the chitty or kuri, the chitty or kuri shall not be deemed to have terminated if there is provision in the variola or vaimbu or kurippattika enabling the remaining foreman or foremen to conduct the chitty or kuri or if the non-prized subscribers agree by a special resolution to the conduct of the chitty or kuri by the remaining foreman or foremen;

(xi) any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949:

Provided that in the case of any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949, any agriculturist debtor shall be entitled to repay such debt in instalments as provided in subsection (2) of section 4, but the provisions of section 5 shall not apply to such debt.

Explanation I.—For the purpose of this clause—

(i) the liability of a surety who is an agriculturist shall be deemed to be a debt within the meaning of this Act, notwithstanding that the principal debtor is a non-agriculturist;

(ii) where a debt has been split up, whether before or after the commencement of this Act, among the heirs, legal representatives or assigns of a debtor or of a creditor or as a result of a partition and fresh documents have been executed in respect of different portions of the debt, each of the different portions shall be a debt.

Explanation II.—Where the debt is a liability in kind, the value of the commodity shall be commuted at the market rate prevailing on the date on which the debt was incurred;

(d) "family" means a joint Hindu family or a marumakkathayam tarwad or tavazhi, or a kudumba, or kavaru or an illom;

(e) "kudikidappukaran" means a person who has no homestead or land of his own to erect a homestead and—

(i) who has been permitted with or without an obligation to pay rent by an owner of land or any other person in lawful possession, to have the use and occupation of a portion of the land in his possession for the purpose of erecting a homestead, or

(ii) who is in occupation of a hut situated in a portion of the land with the permission of the person entitled to possession of such land,

but otherwise has no interest in the land.

Explanation.—For the purpose of this clause, "hut" means any dwelling house which has a value not exceeding four hundred rupees;

(f) "Malabar" means the area comprising the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956;

(g) "pay" with its grammatical variations includes deliver;

(h) "principal" means the amount originally advanced, together with such sum, if any, as has been subsequently advanced, notwithstanding any stipulation to treat any interest as principal and notwithstanding that the debt has been renewed or included in a fresh document whether by the same debtor or by his heirs, legal representatives, or assigns or by any other person acting on his behalf or in his interest and whether in favour of the same creditor or his heirs, legal representatives or assigns or of any other person acting on his behalf or in his interest;

(i) "samhalapattamdar" or "coolypattamdar" or "sambalachittudar" or "licensee" for the purpose of this Act, means any person who is in possession of the land belonging to another and who, under any local custom or usage or under an agreement, cultivates that land for a fixed remuneration, and with the risk of cultivation but does not include a person who cultivates the land of another merely as an agent or servant.

Explanation.—Notwithstanding anything in the Indian Evidence Act, 1872, or in any other law for the time being in

force, a person, though he is described as an agent or servant in a document evidencing the contract for the cultivation of the land, may plead, adduce evidence and prove that he is a sambalapattamdar or coolypattamdar or sambalachittudar or licensee;

(j) "varam agreement" means an agreement, whether in writing or not, entered into between the varamdar and the owner or other person in lawful possession of any land for the cultivation and sharing of the produce of the land;

(k) "varamdar" means a person who under the system known as varam, pathivaram, pankuvaram or pankupattam or by any other name, has agreed, whether in writing or not, with the owner or other person in lawful possession of any land, to cultivate the land and share with him the produce of the land.

3. *Bar of applications.*—(1) No application for execution of a decree in respect of a debt shall be made against any agriculturist in any court before the expiry of six months from the commencement of this Act.

Explanation I.—Where a debt is payable by an agriculturist jointly with a non-agriculturist, no application of the nature mentioned in this sub-section shall be made either against the non-agriculturist or against the agriculturist before the expiry of the period mentioned in this sub-section.

Explanation II.—For the purposes of this Act, a decree shall be deemed to be a decree in respect of a debt notwithstanding that other reliefs are granted in such decree:

Provided that a decree for possession of land shall not be deemed to be a decree in respect of a debt by reason merely of mesne profits being also included in such decree.

Explanation III.—Nothing in this section shall debar a decree-holder from enforcing reliefs other than in respect of a debt, where the decree contains independent reliefs.

Explanation IV.—Where the decree passed is a conditional decree, and the conditions imposed come within the definition of debt, breach of the condition shall not be deemed to have taken place so long as the judgment-debtor acts in accordance with the provisions of this Act.

(2) Where a creditor files a suit for recovery of a debt before the expiry of six months from the commencement of this Act or after the agriculturist has paid or deposited into Court the sums and instalments specified in section 4 and, during the period when he is so entitled to pay, the Court shall in decreeing the suit direct the plaintiff to bear his own costs and to pay the costs of the defendant who is an agriculturist, except in cases where the claim would have been barred by limitation had no such suit been filed or when a debt is jointly due from an agriculturist and non-agriculturist:

Provided that nothing contained in this sub-section shall be a bar to the Court passing any order as to costs as between the plaintiff and other defendants who are not agriculturists.

4. *Payment of debt in instalments.*—(1) Subject to the provisions of sub-section (3), notwithstanding anything contained in any law or contract or in any decree or order of Court, any debt may be discharged in the manner specified in sub-section (2).

(2) If any debt is repaid in seventeen equal half-yearly instalments together with interest, accrued due on the principal debt outstanding at the commencement of this Act till the date of payment of each instalment at the rate of 5 per cent per annum or the contract rate, whichever is less, the first instalment being payable before the expiry of a period of six months from the date of commencement of this Act and the remaining instalments being payable on or before the date of expiry of a period of six months from the last day on which the previous instalment was due, the whole debt shall be deemed to be discharged.

(3) The provisions of this section shall not apply to mortgages to which section 11 applies except as provided in sub-section (6) of that section.

5. *Calculation of interest in the case of debt.*— For determining the amount of a debt for the purposes of payment under this Act, notwithstanding anything contained in any law or contract or in any decree, or order of court to the contrary, not more than one half of the principal shall be deemed payable towards interest which accrued due till the commencement of this Act.

6. *Application of payment towards debt under section 4 and limit of time for execution of decree.*—(1) When any amount has been paid or recovered towards any debt referred to in section 4, the Court shall apply it in the order of costs due under the decree (where the debt has ripened into a decree), then, interest as re-calculated under section 4 and next towards principal.

(2) The provisions of section 4 shall, for purposes of execution, be deemed to be a subsequent order of Court within the meaning of clause (b) of sub-section (1) of section 48 of the Code of Civil Procedure, 1908.

7. *Amendment of certain decrees.*—(1) Where, before the commencement of this Act, a Court has passed a decree for repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or on the application of the decree-holder apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be.

(2) The provisions of sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of any debt.

8. *Power of Court to decide doubts and disputes regarding amount payable under section 4.*—(1) Any debtor or creditor

may apply to the Court for an order fixing the amount payable under section 4 and in that application he shall state what is the correct amount payable according to him.

(2) (a) If the debt is covered by a decree, the application shall be made to the Court which passed the decree.

(b) If the debt is not covered by a decree, the application shall be made to the Court competent to pass a decree for the recovery of the debt.

(3) An application made by a debtor under sub-section (1) shall be dismissed if the debtor fails to deposit with the Court, before which such application is pending, the amount of any instalment which on his admission is payable by him under the provisions of this Act and has accrued due and no second application for the same purpose shall be entertained:

Provided that the Court may extend the time for making the deposit for any just and sufficient cause.

(4) A proceeding under this section shall, for purposes of inquiry and disposal, be deemed to be a proceeding to which section 141 of the Code of Civil Procedure, 1908, applies.

(5) The Court shall by its order determine the amount which the debtor has to pay under the provisions of section 4 and the time within which such payment shall be made and any payment made in accordance with such order shall be deemed to be a valid payment for purposes of section 4.

(6) An appeal shall lie against any order passed by a Court under sub-section (1) to the Court to which appeals ordinarily lie from the decisions of such Court in suits for the recovery of debts and the order passed in appeal shall be final.

(7) In an application filed by the creditor under this section in respect of a debt not covered by a decree, he shall be liable to pay court fees on the difference between the amount claimed by him and that admitted by the debtor. The court fees shall be paid within a period of two weeks from the date on which the counter-statement is filed by the debtor or within such further time as may be decided by the Court.

(8) In an application filed by the debtor under this section in respect of a debt not covered by a decree the creditor shall be liable to pay court fees on the difference between the amount admitted by the debtor and that claimed by the creditor. The court fees shall be paid along with the counter-statement filed by the creditor or within such time thereafter as may be decided by the court.

(9) The court fees payable under sub-section (7) or sub-section (8) shall be at the rates under the Court Fees Act for the time being in force, for suits for recovery of money.

(10) If the creditor fails to pay court fees under sub-section (7) or sub-section (8), his application or counter-statement, as the case may be, shall be rejected.

(11) The order passed by the Court on an application filed under this section shall have the force of a decree of a civil court of competent jurisdiction and shall be executable as such.

9. *Right to prove nature of transactions.*—(1) Notwithstanding anything in the Indian Evidence Act, 1872, or in any other law for the time being in force, any agriculturist may apply to the Court to re-open any subsisting transaction, whether reduced to writing or not, on the ground that it is really a transaction of debt or that the amount mentioned in the transaction is not the actual amount and may plead, adduce evidence and prove such grounds. Thereupon the Court shall ascertain whether the transaction is a debt or the amount mentioned in the transaction is the actual amount of the debt and pass an order in conformity with the other provisions of this Act.

Explanation.—In this sub-section, the expression "Court" shall include any officer or authority appointed by the Government to exercise the functions of a Court under this sub-section.

(2) An appeal shall lie against any order passed by a Court under sub-section (1) to the Court to which appeals ordinarily lie from the decisions of such Court in suits for the recovery of debts and where the order is passed by any officer or authority appointed to exercise the functions of a Court, the appeal shall lie to such other authority notified by the Government in that behalf, and the order passed in appeal shall be final.

(3) Notwithstanding anything in the Indian Evidence Act, 1872, in the case of any transaction entered into on or after 1st January 1946 and purporting to be a sale of immovable property or a lease of usufructs, any agriculturist who is a party to the transaction may plead, adduce evidence and prove that the transaction is really a debt and thereupon the amount advanced shall be deemed to be the principal of the debt and the income from the property or the value of the usufructs, as the case may be, shall be appropriated towards interest calculated at five per cent per annum on the principal and the balance, if any, towards the principal. The amount, if any, outstanding after such appropriation together with the value of improvements, if any, effected by the creditor shall be paid in accordance with the provisions of this Act and when such amount has been wholly paid the property shall be reconveyed to the agriculturist debtor:

Provided that this sub-section shall not affect the rights of *bona fide* alienees of the creditor deriving rights before 20th November, 1957.

10. *Suits against debtor.*—(1) Where in respect of a decree for debt passed before the commencement of this Act, a debtor fails to make any one of the payments specified in sub-section (2) of section 4 or in the order on the application made under

section 8, the decree-holder shall be entitled to execute the decree in respect of the instalment which is in arrear.

(2) In any suit filed after the commencement of this Act, for recovery of a debt, the Court in decreeing the suit shall provide for the immediate payment of such instalment or instalments as would have become due under the provisions of sub-section (2) of section 4 and the balance in further instalments as specified therein.

(3) Where in any suit for recovery of a debt pending at the commencement of this Act, the debtor claims to be an agriculturist, the Court shall, if the debtor is an agriculturist, pass a decree for immediate payment of such instalment or instalments as would have become payable under the provisions of sub-section (2) of section 4 and the balance in further instalments as specified therein.

(4) Where in any suit to recover a debt or in any application for the execution of a decree therefor the debt is payable by an agriculturist jointly with a non-agriculturist the Court shall pass a decree or make an order for the payment of the debt found due from the agriculturist as provided in sub-section (2) of section 4 and make such provision in the decree or order against the non-agriculturist as the circumstances of the case may warrant.

11. *Special provision in respect of usufructuary mortgages by agriculturists.*—(1) Subject to the provisions of section 25, this section applies to all subsisting mortgages executed by an agriculturist at any time before the commencement of this Act and by virtue of which the mortgagee is in possession of the property mortgaged to him or any portion thereof.

Explanation.—A mortgagee shall be deemed to be in possession of the property mortgaged to him or any portion thereof, notwithstanding that he has leased it to any person other than the mortgagor.

(2) Notwithstanding that the period of the mortgage has not expired, the mortgagor shall be entitled, subject to the provisions of sub-section (3), to recover the property mortgaged on depositing in the court—

(a) one half of the mortgage amount;

(b) where payment of interest to the mortgagee has been stipulated for, in respect of the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property, or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such and there has been arrears of such interest, such arrears; and

(c) the value of improvements, if any, effected subsequent to the date of the mortgage by the mortgagee in the property mortgaged, as determined by the Court.

(3) Along with the deposit made under sub-section (2), the mortgagor shall pay court fees as for a suit for redemption

on the balance of the mortgage amount and the Court shall pass a decree allowing the mortgagee to recover by sale of the mortgaged property the said balance amount in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment at five per cent per annum, the first instalment being payable within a period of six months from the date on which the mortgagor recovered possession of the property mortgaged. On payment of the last instalment the mortgage shall be deemed to be discharged.

(4) Where the property mortgaged has been leased out by the mortgagee, the lease shall stand terminated when the mortgagor recovers possession of the property mortgaged and thereupon any value of improvements due to the lessee shall be paid to him out of the amount deposited by the mortgagor under sub-section (2) towards the value of improvements.

(5) The charge for the balance amount due to the mortgagee shall have priority over all other charges created after the date of the mortgage.

(6) Nothing contained in sub-sections (2) to (5) shall apply to mortgages where the property mortgaged has been leased back to the mortgagor by the mortgagee and to such mortgages the following provisions shall apply:—

(a) the mortgage shall be deemed to be a simple mortgage from the date of the leaseback and the provisions of this Act shall apply to the debt covered by the mortgage;

(b) the interest payable on the mortgage amount after the commencement of this Act shall be at five per cent per annum.

(7) Where the equity of redemption over the mortgaged property has been sold in execution of a decree for a claim arising under the mortgage and the mortgagee is the auction purchaser of the said property, the balance of any claim arising under the mortgage shall be deemed to be discharged.

12. *Deposit of debt into Court.*—(1) An agriculturist may deposit any of the instalments as provided in section 4 into the Court having jurisdiction to entertain a suit for recovery of the debt or into the Court which passed the decree, as the case may be, and apply to the Court to record part-satisfaction of the debt.

(2) Where any such application is made, the Court shall pass an order recording part-satisfaction of the debt if the amount deposited is the correct amount.

(3) The Court shall dismiss the application—

(a) if the applicant is not an agriculturist; or

(b) if the liability is not a debt; or

(c) if the amount deposited is insufficient and the applicant, on being required by the Court to deposit the deficit amount within a time fixed by the Court, fails to do so.

(4) Any agriculturist entitled to make such deposit may, before the date on which any instalment is due, apply to the Court having jurisdiction under sub-section (1) for an extension of the time for making the deposit of the whole or any portion of such instalment and the Court may, after notice to the creditor, extend the time for payment of such instalment or part thereof for such period as it thinks fit.

(5) The procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits shall, as far as may be, apply to applications made under this section.

13. *Appeals.*—An appeal shall lie from an order passed by a Court under section 12, as if such order relates to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908, and the provisions of the Indian Limitation Act, 1908, shall apply to such appeals.

14. *Deposit of debt in bank.*—(1) Notwithstanding anything contained in section 12, it shall be lawful for an agriculturist by notice in writing to require his creditor to specify within ten days from the date of receipt of the notice by him the bank into which the amount due from him as provided in section 4 may be deposited in the account of the creditor.

(2) If the creditor specifies a bank as aforesaid, the agriculturist may deposit the amount in the bank and continue to so deposit any further instalments which may subsequently become due.

(3) If the creditor does not specify a bank as aforesaid, the agriculturist may remit the amount in the account of the creditor in any scheduled bank and intimate the creditor by written notice of the fact of such deposit.

(4) The deposit made under this section shall be a valid discharge of the debt to the extent of the deposit.

15. *Application to Court in the case of persons unable to pay debts under the Act.*—(1) Any agriculturist who is unable to pay his debts under the foregoing provisions of this Act, may present an application to the Court within whose jurisdiction he resides or ordinarily carries on business for a full settlement of his debts.

(2) Every such application shall be in writing and shall be signed by the applicant and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

(3) Every such application shall contain the following particulars, namely:—

(a) the place where the applicant resides and the place or places where he holds any property, movable or immovable;

(b) the amount and other particulars of all claims against him at the commencement of this Act, together with the name, address and residence of his creditors;

(c) the amount and other particulars of all his property including claims due to him together with a specification of the

value of such property and the place or places at which any such property is to be found and details of any mortgage, lien or charges thereon;

(d) a statement that he wants a fair settlement of his debts;

(e) a statement that he unconditionally leaves all his assets in the control of the Court; and

(f) other particulars if so prescribed by rules.

(4) The Court for purposes of this section shall be the Court of a Munsiff if the total of the debt does not exceed Rs. 5,000 and in all other cases the Court of a Subordinate Judge.

16. *Court's order fixing date, and notice thereof.*—(1) On receipt of an application under section 15, the Court shall pass an order fixing a date for hearing the application.

(2) Notice of such order shall be sent by registered post acknowledgment due, and in such other manner, if so prescribed by rules, to all the parties to the proceedings.

17. *Applicability of the Insolvency Act to proceedings before Court.*—The Court shall determine the admissibility and the amount of each such claim and shall for such purpose take all steps necessary for the determination of any question raised in the case. The procedure prescribed in the Insolvency Act, 1955, shall *mutatis mutandis* be applicable to such proceedings.

18. *Settlement of liabilities by Court.*—The Court shall then settle the liabilities of the debtor in the manner mentioned hereunder, namely:—

(a) one-fourth of the entire assets not exceeding Rs. 4,000 in value shall be allotted and given over to the debtor subject only to such liabilities by way of public revenue due on land as defined in the Revenue Recovery Act for the time being in force or any tax, cess, fee, rent, jenmikaram or such other dues chargeable thereon by virtue of any enactment for the time being in force:

Provided that in such allotment the homestead in which the debtor lives shall, wherever possible, be allotted to his share;

(b) after payment of all liabilities by way of public revenue due on land as defined in the Revenue Recovery Act for the time being in force or any tax, cess, fee, rent, jenmikaram or such other dues chargeable by virtue of any enactment for the time being in force, all the remaining assets shall be distributed and made over to the creditors:

Provided that secured creditors shall, in the order of mutual priority, be paid in preference to unsecured creditors, and after payment of all debts due to the Government or to any local authority, the balance of the assets shall be distributed amongst unsecured creditors in proportion to their debts.

19. *Presumption as to transfer of immovable property of the debtor.*—(1) Every transfer of immovable property made

by a debtor entitled to the benefits of this Act after 20th November 1957 and before the complete discharge of his debt shall, in any suit or other proceeding with respect to such transfer, be presumed, until the contrary is proved, to have been made with intent to defeat or delay the creditors of the transferor.

(2) Where a debtor entitled to the benefits of this Act has in collusion with another allowed his immovable property to be sold after 20th November 1957 through Court or otherwise with a view to defeat or delay his creditors, the sale shall be voidable at the option of any creditor so defeated or delayed.

20. *Exclusion of time for limitation.*—In computing the period of limitation for an application for the execution of a decree in respect of a debt, the time during which the making of the application was barred under section 3 shall be excluded.

21. *Effect of payment or deposit under section* 4, 8, 11, 12 *or* 14.—Where a debt is payable by an agriculturist either by himself or jointly with a non-agriculturist and where the agriculturist makes payment or deposits amount towards that debt as provided for in section 4, 8, 11, 12 or 14, a fresh period of limitation shall be computed from the time when the payment or deposit was made both against the agriculturist and non-agriculturist.

22. *Sales of immovable property to be set aside in certain cases.*—(1) Where any immovable property in which an agriculturist had an interest has been foreclosed, or sold, either in execution of any decree or under the provisions of the Revenue Recovery Act for the time being in force, for the recovery of a debt due to a creditor or to a banking company, as defined in the Banking Companies Act, 1949, in liquidation—

(i) on or after 1st November, 1956, or

(ii) before 1st November, 1956, but the possession of the said property has not actually passed before 20th November 1957, from the judgment debtor to the purchaser,

then, notwithstanding anything in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed such judgment debtor, may—

(a) in the case of a sale where the purchaser is the decree-holder, deposit one-half of the purchase money together with the costs of execution, where such costs were not included in the purchase money, and apply to the Court within six months of the commencement of this Act to set aside the sale of the property and the Court shall, if satisfied that the applicant is an agriculturist entitled to the benefits of this Act, order the sale to be set aside and the Court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment at five per cent per annum,

the first instalment being payable within a period of six months from the date of the order of the Court; and

(b) in other cases, deposit the purchase money as respects sales, or the mortgage amount including interest and costs as respects foreclosures, and apply to the Court within six months of the commencement of this Act to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is an agriculturist entitled to the benefits of this Act, order the sale or foreclosure to be set aside:

Provided that no such order shall be made without notice to the decree-holder, the auction purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter:

Provided further that where improvements have been effected on the property sold after the date of the sale or foreclosure and before the notice under the first proviso, the value of such improvements as determined by the Court shall be deposited by the debtor for payment to the auction purchaser:

Provided further that this sub-section shall not affect the rights of *bona fide* alienees of the purchaser deriving rights before 20th November, 1957.

(2) Where a sale or foreclosure is set aside under clause (a) or clause (b) of sub-section (1), in case the Judgment-debtor is out of possession of the property, the Court shall order re-delivery of the property to the judgment-debtor.

(3) Where in respect of any sale of immovable property which has not been confirmed, a petition for setting aside the sale is pending in any Court at the commencement of this Act, the agriculturist judgment-debtor shall be entitled to pay the decree debt in accordance with the provisions of sections 4 and 5, and on the deposit of the first instalment thereof, the sale shall be set aside. Where the judgment-debtor fails to deposit any of the subsequent instalments, the decree-holder shall be entitled to execute the decree and recover the defaulted instalment or instalments in accordance with the provisions of this Act.

Explanation.—For the purposes of this section the expression 'Court' shall include a Revenue Court or authority exercising powers under the Revenue Recovery Act for the time being in force, and the expression 'judgment-debtor' shall include a debtor from whom money was due to a banking company as defined in the Banking Companies Act, 1949, in liquidation.

23. *Sale with condition to re-purchase to be deemed to be mortgages.*—Where under a sale deed in respect of immovable property there is provision to repurchase the property within any stipulated period on payment of any specified amount and such period has not expired at the commencement of this Act, then, notwithstanding any law or contract to the contrary, the transaction shall be deemed to be a mortgage and the provisions

of section 11 shall apply thereto. The consideration for the sale shall be deemed to be the mortgage amount.

24. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act and thereupon they shall be valid as if enacted in this Act.

(2) Such rules may provide for—

(i) the exercise of the powers of the Court under this Act by any officer or authority appointed under sub-section (1) of section 9;

(ii) prescribing the form of and the fees to be paid in respect of applications mentioned in this Act.

(3) All rules made under this Act shall be laid for not less than seven days before the Legislative Assembly, as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

25. *Saving.*—Nothing contained in this Act shall apply to mortgages having any one or more of the following incidents:—

(a) the mortgaged property is waste land and there is provision for effecting permanent improvements thereon by the mortgagee; or

(b) there is provision for renewal or there has been a renewal or renewals; or

(c) there is provision for payment of michavaram, rent or customary dues; or

(d) where the mortgagee has constructed a residential building in the property mortgaged and has been living therein and has effected improvements in the said property; or

(e) where a transaction which though purporting to be a mortgage is one really in the nature of a kanam, kuzhikanam, kanamkuzhikanam, verumpattam or any other agricultural lease and notwithstanding anything contained in the Indian Evidence Act, 1872 or in any other law for the time being in force, any person interested in any land may plead, adduce evidence and prove that a transaction, though purporting to be a mortgage of that land is not in fact a mortgage but a transaction by way of kanam, kuzhikanam, kanamkuzhikanam, verumpattam or any other agricultural lease.

26. *Repeal.*—The Madras Agriculturists Relief Act, 1938 and the Madras Indebted Agriculturist (Repayment of Debts) Act, 1955, as in force in Malabar and the Travancore-Cochin Indebted Agriculturists Relief Act, 1956 are hereby repealed.